Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-257/17
C and A v Staatssecretaris van Veiligheid en Justitie

Advocate General Mengozzi proposes that the Court should rule that the Netherlands law requiring a person who already has the right to family reunification to pass a second civic integration examination in order to obtain an autonomous residence permit is incompatible with EU law.

The effects of the right to an autonomous residence permit must commence, at the latest, at the date on which such an application is lodged

Until 2014, C, a Chinese national, held a permit to reside in the Netherlands with her spouse, a Netherlands national. In 2015, C divorced her spouse and then lodged an application for an autonomous residence permit. The State Secretary rejected that application and also withdrew the residence permit to reside with a spouse with retroactive effect from the date on which C was no longer registered at the same address as her spouse, namely 10 February 2014. However, the State Secretary retroactively granted C an autonomous residence permit from the date on which C fulfilled the condition relating to the requirement to pass a second civic integration examination, namely 16 February 2015. Consequently, C's lawful residence was interrupted for an interim period between 10 February 2014 and 16 February 2015.

A is a Congolese national. He held residence permit to reside with his spouse until 2016. On 28 July 2015, the marriage between A and his spouse of Netherlands nationality was dissolved. He applied for an autonomous residence permit, but the State Secretary rejected that application on the ground that A had not proven that he had passed the second civic integration examination or that he was exempted from that examination, or the requirement to pass it dispensed with.

Hearing appeals in both those disputes, the Raad van State (Council of State, Netherlands) decided to refer a question for a preliminary ruling to the Court of Justice. The latter is asked, in particular, to reply to the question whether EU law[1] precludes a Member State from requiring that nationals of non-EU countries, who have a right of residence by virtue of family reunification and who wish to benefit from an autonomous residence permit independent from that of the sponsor, to pass a new civic integration examination beforehand and, therefore, from the date on which that autonomous permit has effect.

In today's opinion, Advocate General Paolo Mengozzi considers first of all that the Court has jurisdiction to interpret the EU law in the situations in question, even though that law is purely internal to the Netherlands. The Netherlands legislature unilaterally decided to extend the scope of the directive on family reunification to Netherlands sponsors who have not exercised their freedom of movement. Nevertheless, the interest of the EU in a uniform interpretation remains, first, in order to prevent divergence in the application of EU law and, second, on account of the need to avoid different treatment of situations that a Member State has chosen to align with the solutions provided by EU law.

As regards the question concerning the autonomous residence permit, the Advocate General observes that, in the Netherlands, the integration process appears to take place in two stages. The first stage is governed by the directive on family reunification. In that regard, the Court has already held that Member States may require non-EU nationals to pass a civic integration examination.

[1] Council Directive 2003/86 of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p.12)

That examination includes the assessment of the basic knowledge both of the language and the society of the Member State concerned and involves the payment of various fees.

However, in Netherlands law there is a second stage of integration which is also based on the EU directive. That stage of integration requires that a new examination is passed if the family member wishes to obtain an autonomous status and no longer be dependent on the sponsor's residence permit.

In that regard, the Advocate General emphasises that, under the system established by the directive, the autonomous status of the sponsor's family members is a specific status which brings to an end the dependence on the sponsor. Thus, in difficult situations or if the sponsor's residence permit were withdrawn or had just expired, the family member holding an autonomous permit would not be penalised as a result.

The Advocate General is of the view that the purpose of the directive cannot support the argument that the 'conditions relating to the granting … of an autonomous residence permit' can encompass a substantive condition, such as passing a second civic integration examination. According to him, that expression should rather be interpreted as covering merely the Member States' right to require the submission of an application for an autonomous residence permit and the specification of the information to be provided in support of such an application. **In other words, it covers formal or administrative conditions and not substantive ones.**

The Advocate General therefore proposes that the Court rules that the directive precludes national legislation which provides that an application for an autonomous residence permit on the part of a national of a non-EU country who has resided lawfully for more than five years in the territory of a Member State for the purposes of family reunification may be rejected because of non-compliance with substantive conditions relating to integration.

As a subsidiary matter, the Advocate General considers that the applicable conditions under the Netherlands rules are particularly rigorous and go beyond those laid down at the time of first admission to the Netherlands by virtue of the right to family reunification. The applicant must first, within three years, acquire oral and written skills in Dutch equating to at least level A2 on the European Framework of Reference for Modern Foreign Languages. Those skills consist of speaking, listening, writing and reading skills. Secondly, the applicant must acquire knowledge of Netherlands society over the course of those three years. Such knowledge consists, on the one hand, of knowledge of Netherlands society and, on the other hand, of Netherlands labour market orientation.

Finally, the Advocate General considers that the effects of the autonomous right of residence must commence, at the latest, on the date on which that application is made. That residence permit should be declaratory.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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